

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RICHARD MICHAEL SIERADZKI,

Petitioner,

Case No. 1:07-cv-121

v

HON. JANET T. NEFF

CARMEN PALMER,

Respondent.

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**FINAL ORDER**

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court dismiss the petition as barred by the one-year statute of limitations. The matter is presently before the Court on Petitioner's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of the portion of the Report and Recommendation to which an objection has been made. The Court denies the objection and issues this Judgment pursuant to FED. R. CIV. P. 58.

Petitioner argues that he should be granted equitable tolling because of the reluctance of local attorneys to take his appeal, which he claims left him with "no choice" but to proceed in pro per. However, the Magistrate Judge confirmed two places in the trial court record where petitioner was made aware of his right to request the appointment of an attorney to represent him on appeal. Report and Recommendation, 6-7. Petitioner's argument therefore reveals no error in the Magistrate Judge's analysis that requires a different result.

Having so determined, the Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the issue raised. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Slack*, 529 U.S. at 484. Upon review, this Court finds that reasonable jurists would not find the Court’s procedural ruling debatable. A certificate of appealability will therefore be denied.

**THEREFORE, IT IS ORDERED** that the objections (Dkt 3) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 2) is APPROVED and ADOPTED as the opinion of the Court.

**IT IS FURTHER ORDERED** that the petition for habeas corpus relief (Dkt 1) is DENIED for the reasons stated in the Report and Recommendation.

**IT IS FURTHER ORDERED** that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED as to petitioner’s asserted issue.

Date: June 2, 2008

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge